

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
GREENVILLE DIVISION

Garrett Smith, a/k/a Garrin Smith,  
Petitioner,

v.

United States of America,

Respondent.

C/A No. 6:05-2932-GRA

SUPPLEMENTAL  
ORDER

This matter is before this Court on petition of Garrett Smith pursuant to 28 U.S.C. § 2255 and Petitioner's motion for summary judgment. Petitioner moves before this Court, pursuant to Federal Rules of Civil Procedure 56, to grant his motion and vacate his sentence because the Government has failed to respond.

This Court directs the United States Attorney to file a response to the petition and if an extension of time is needed, the Respondent may move before this Court for such time. This response is due within 20 days of the entry of this order or, if transcripts are required for the response, within 20 days of the receipt of those transcripts.

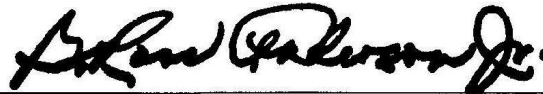
It is further held that Petitioner's motion for summary judgment is denied. *See Allen v. Perini*, 424 F.2d 134, 138 (6th Cir.) ("The failure of State officials to file a timely return does not relieve the prisoner of his burden of proof. Default judgments in habeas corpus proceedings are not available as a procedure to empty State prisons without evidentiary hearings. We conclude that the failure of the Office of the Attorney General of Ohio to file a timely return does not afford a basis

for instant relief. Despite the delinquency of the State, the District Court was obligated to decide the case on its merits."), *cert. denied*, 400 U.S. 906 (1970).

IT IS THEREFORE ORDERED that the Petitioner's motion for summary judgment be DENIED.

IT IS FURTHER ORDERED that the United States Attorney shall file a response within 20 days of the entry of this order or, if transcripts are required for the response, within 20 days of the receipt of those transcripts.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "G. Ross Anderson, Jr.", is written over a horizontal line.

G. ROSS ANDERSON, JR.  
UNITED STATES DISTRICT JUDGE

Anderson, South Carolina  
December 9, 2005

NOTICE OF RIGHT TO APPEAL

Plaintiff has the right to appeal this Order within sixty (60) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure. Failure to meet this deadline, as modified by Rule 4 of the Federal Rules of Appellate Procedure, will waive the right to appeal.